

# EXHIBIT B

Alabama Gas Corporation v. Travelers Casualty and Surety Company, et al.  
Hon. Bernard Harwood

2:10-CV-1840 IPJ  
October 26, 2011

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ALABAMA  
3 SOUTHERN DIVISION

5 CASE NO: 2:10-CV-1840 IPJ

7 ALABAMA GAS CORPORATION,

8 PLAINTIFF,

9 V.

10 TRAVELERS CASUALTY and SURETY COMPANY, et al.,  
11 DEFENDANTS.

12

15 DEPOSITION

16 OF

17 Hon. Bernard Harwood

18 October 26, 2011

20 REPORTED BY: April Sargent

21 Certified Court Reporter

22 and Notary Public

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1 approach to the analyses of the ones I'm used to  
2 seeing Alabama courts adopt.

3 Q. In the process of formulating your  
4 opinions for this case, did you evaluate the  
5 degree to which, to pick a state, Illinois'  
6 approached to insurance problems mirrored the  
7 standards in Alabama?

8 MR. WINSTON: Objection. Vague.

9 A. As I read some of those cases, I  
10 probably noted that, but I didn't make an  
11 intentional sort of comparison or checklist.

12 Q. And so the same thing would be true  
13 with any of the other jurisdictions where you  
14 reviewed the cases. You didn't make a specific  
15 comparison to see whether they were to the same  
16 degree, more, or less, or similar than  
17 California in Alabama?

18 MR. WINSTON: Object to the form.

19 A. I would've noted it as I read the  
20 opinion, but I didn't retain it to the extent of  
21 trying to say, okay, this state did it this way  
22 or this state did it that way.

23 MR. LASETER: And Mr. Winston,  
24 other than perhaps me mumbling, can you explain  
25 the form or objection of that question.

1 MR. WINSTON: It was compound on  
2 multiple levels. It was leading, and it was  
3 vague.

4 MR. LASETER: I think I get to lead  
5 him. Let me see if I can break it down so that  
6 it's not compound.

7 Q. And I think your answer is clear  
8 enough. But did you evaluate whether any of the  
9 other jurisdictions were less similar to Alabama  
10 law with regard to approach to insurance policy  
11 evaluation in California?

12                   A.        I would've gained that impression  
13    as I was going through the case, but I don't  
14    retain it as far as any particular state.

15 Q. And likewise you didn't evaluate  
16 whether any other jurisdiction was equally as  
17 similar to Alabama as California?

18 A. No.

19 Q. And likewise you didn't evaluate  
20 whether any other jurisdictions were less  
21 similar to Alabama law than California law?

22 A No

23 Q. In the course of preparing your  
24 opinion in this case, did you review any  
25 decisions that were critical of that Foster

1 decision?

2 A. Well, I read pretty much the whole  
3 body of cases that you all variously have cited.  
4 But I don't recall specifically now which ones  
5 came after it and took note of it.

6 Q. I may not have asked a good  
7 question. I meant to ask you whether you recall  
8 reading a case that was expressly critical of  
9 Foster?

10 MR. WINSTON: Objection. Asked and  
11 answered.

12 A. Not as such.

13 Q. Do you recall the Porterfield  
14 decision that you authored?

15 A. I remember that name. You'll have  
16 to give me a little better guidance on which one  
17 it was.

18 Q. I believe Porterfield, the Autobahn  
19 Insurance Company?

20 A. Autobahn, I do.

21 Q. In that case I believe you observed  
22 that whether or not courts in other  
23 jurisdictions have reached differing views with  
24 regard to the interpretation of the term is at  
25 least some evidence with regard to whether or

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1 you'll offer an opinion Travelers did not act in  
2 bad faith in this case?

3 A. Yes.

4 Q. Do I also understand correctly that  
5 you'll offer an opinion on the relationship  
6 between the term "suit" as it appears -- and  
7 suit should probably be in quotations marks --  
8 "suit" as it appears in the policy and the word,  
9 "claim" that appears in the policy?

10 A. Well, to the extent that I  
11 addressed that in the report, yes.

12 Q. And if I understand the way you  
13 address it in the report, you'll offer an  
14 opinion that the policy language makes a  
15 distinction between the term "suit" and the term  
16 "claim"?

17 A. Right. Consistently throughout the  
18 policy, anytime either of those terms is used,  
19 that distinction is honored.

20 Q. I'll alert you in advance that this  
21 may be a complicated-sounding question, and I'll  
22 do my best. Did I also understand correctly  
23 that you will offer an opinion that under  
24 Alabama juris prudence that Court will put more  
25 -- and by court I mean the Alabama Supreme Court

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1 -- will put more weight on what it views to be  
2 the better reasoned approach rather than looking  
3 to the weight of majority versus minority  
4 decisions on a given issue elsewhere?

5 A. Yeah, I think rather than just  
6 doing the counting of noses, the Alabama Supreme  
7 Court would look to the underlying reasons and  
8 rationales and adopt that which appeared to be  
9 the -- as they've used the term,  
10 "better-reasoned" approach.

11 Q. And finally, am I correct that  
12 you'll offer an opinion that Travelers' basis of  
13 denial was at least debatable under Alabama law?

14 A. Correct.

15 Q. And if it helps to take a moment  
16 and look through your report -- I believe I've  
17 summarized your major points. And by asking  
18 this question I don't mean to try to exclude any  
19 particular sentence here, but is that a fair  
20 summary of your major points?

21 MR. WINSTON: Well, objection. The  
22 document speaks for itself.

23 Q. Let me try to ask a better  
24 question. Are you aware of major points of your  
25 opinion that I've omitted in this list I just

1 gave?

2 MR. WINSTON: Same objection.

3 A. I really can't assign major in  
4 minor. The opinions I've expressed are all laid  
5 out there. I can't really champion them in a  
6 hierarchy.

7 Q. Fair enough. I'm sitting here  
8 today, having not thoroughly read this report,  
9 are there points you believe important that that  
10 I have not articulated here?

11 MR. WINSTON: Objection. It's  
12 cumulative. The document speaks for itself.

13 A. Well, I don't say there it is, but  
14 I'm just saying if it's in the report, then I  
15 consider it worthy of consideration as part of  
16 my opinion.

17 Q. And fair enough. And my reason for  
18 asking those questions is that often times --  
19 and I've actually seen this in some of your  
20 prior reports -- expert witnesses will give sort  
21 of a summary bullet of their opinions and then  
22 follow that with a more detailed analysis. In  
23 this case you didn't do that, so I'm just trying  
24 to be sure I understand sort of in a summary  
25 fashion what your opinions will be.